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No. 99-669

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

AMERICAN TELEPHONE & TELEGRAPH CO.,

Petitioner,

v.

SECURITY WATCH, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. When the District Court grants a Motion to Dismiss a Complaint based on a forum selection clause and the Plaintiff appeals the final order under 28 U.S.C. § 1291, does the Defendant divest the Court of Appeals of jurisdiction by raising a dispute resolution clause at the appeal as an alternate grounds for affirming the dismissal of the Complaint?

2. Does the Federal policy favoring arbitration pursuant to the Federal Arbitration Act bar a Court from applying any other canon of construction in deciding which disputes the parties intended to include in a dispute resolution procedure?

3. Should the Supreme Court grant review in this case to decide whether the Court of Appeals correctly construed the dispute resolution clause?

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OPINIONS BELOW

In addition to the opinions reproduced in Petitioner's Appendix at pages 1a, 15a-23a, and 24a, Respondent reproduces the District Court's Judgment filed December 15, 1997, dismissing the action in accordance with its October 27, 1997, Order on Motion to Dismiss Complaint in the Appendix to this opposition brief ("Resp. App.") at page 1a.

JURISDICTION

Petitioner has invoked this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Petitioner cites the statutes involved in this case and their pertinent text is set out in Respondent's Appendix at pages 2a-4a. The relevant statutory provisions are 1) 28 U.S.C. § 1291 conferring appellate jurisdiction of appeals from all final decisions of the District Court; 2) 9 U.S.C. § 16 which identifies several types of Orders related to arbitration and appellate jurisdiction; and 3) 9 U.S.C. § 4 which relates to petitions to the District Court for an Order directing arbitration.

STATEMENT OF THE CASE

Factual Background

From 1988 to 1994, Respondent, Security Watch, Inc. ("Security") served as a dealer of security systems distributed by Sentinel Systems, Inc. ("Sentinel"), its distributor, and manufactured by Petitioner, AT&T. Annual Dealer Agreements ("Agreements") were entered into between Security and Sentinel. AT&T was not a party to those agreements. Security filed its lawsuit against Sentinel and AT&T for breach of contract, breach of warranty and other claims all arising from defective AT&T products furnished to Security under the 1993 Agreement.

Sentinel and AT&T filed a joint Motion to Dismiss pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure arguing, *inter alia*, that the 1994 Agreement superseded the 1993 Agreement by virtue of a "merger clause" contained in the 1994 Agreement. Sentinel and AT&T argued that because the 1994 Agreement superseded the 1993 Agreement, the parties were required to follow the dispute resolution procedures contained in the 1994 Agreement. AT&T also argued that the 1994 dispute resolution clause was broad enough in scope to include disputes arising under the 1993 Agreement. That argument was rejected by the District Court. AT&T did not invoke the procedures set forth in the FAA (9 U.S.C. § 3 and 9 U.S.C. § 4) to compel arbitration. Rather, it sought dismissal of Security's action on the basis that Security's purported contractual obligation to seek its remedies, if any, must be pursued in a different jurisdiction.

The District Court's Order

AT&T and Sentinel filed their joint Motion to Dismiss pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure. The Court never addressed the applicability of the FAA (obviously not persuaded by AT&T's argument) but instead ruled on what "the parties intended by the language of § 19 of the 1994 Agreement (the merger clause) when they provided that the terms of the contract superseded all written understandings between the parties concerning 'the subject matter of the Agreement' ". The District Court found that, "the pre-1994 contracts between *those two parties* [Security and Sentinel] being written understandings, are superseded by the terms of the 1994 contract, and its requirements that the parties follow certain enumerated dispute resolution processes, including certain arbitration provisions." The District Court further held that " . . . the issue of the amount involved is not one properly for this Court to determine, that issue is to be addressed by the arbitrator *or New Jersey Courts* . . . " (Pet. App. 22a). The Court ruled that AT&T and Sentinel's Motion to Dismiss was, therefore, granted on the grounds that (1) the choice of forum clause precluded suit against Sentinel in Tennessee; and (2) the dispute resolution processes in the 1994 contract required the parties to either arbitrate their dispute *or file suit in New Jersey*. Because the Tennessee forum was precluded by the parties' contract in any case, the District Court dismissed rather than stayed the action. *A final judgment was entered on the Order.* (Resp. App. 1a). Although AT&T presented its FAA arguments to the District Court, the District Court simply did not consider

them as grounds for the dismissal but rather relied upon the merger clause and forum selection provisions.

Respondent submits that Petitioner has misstated the facts in its Petition on page 4. The District Court did not rule that the ADR provisions covered all disputes against Sentinel or AT&T arising after execution of the 1994 Agreement, including all disputes plead in the lawsuit. The District Court, with respect to AT&T, ruled that the dispute resolution processes of the 1994 Agreement required the parties to either arbitrate their disputes or file suit in New Jersey. Petitioner has made additional misstatements of fact. Petitioner states at page 4 that the District Court found that all of Security's claims against AT&T were legally barred in Federal Court by the dispute resolution clauses of the 1994 Agreement. *The District Court made no such ruling.* The District Court relied upon the "merger clause" in the 1994 Agreement in ruling on AT&T and Sentinel's Rule 12 (b) Motion to Dismiss. Petitioner states, in error, at page 5 of its Petition, "In effect, the Court held that the parties must have intended to use ADR to resolve all disputes arising after the execution of the 1994 Agreement, regardless of whether the dispute might arguably have arisen under a prior contract." The Court made no such holding. With respect to Petitioner's argument in the District Court that the dispute involved an amount in excess of one million dollars ($1,000,000) and thus not subject to arbitration under the Agreement but could be subject of a suit in New Jersey instead, the District Court held that the issue of the amount in controversy would be addressed to the arbitrator *or New Jersey Courts.* Petitioner has misstated the facts and ruling of the

District Court at page 5. The District Court did not determine the amount in controversy and thus did not determine whether arbitration would be required under the Agreement if preliminary resolution efforts failed. The District Court simply dismissed the action because, in any event, the Agreement precluded Security's claims in Tennessee. The dismissal was based upon the forum selection clauses contained in the Agreement. AT&T's alternate grounds for dismissal (the scope of the arbitration clause) was not considered by the District Court.

Petitioner misstates the District Court by saying that it found that even if Security's fall back argument were correct regarding the amount of damages, the proper forum for this suit would be "in New Jersey." In fact, what the District Court found was that the issue of the amount in controversy "can be the subject of a suit in New Jersey instead." The District Court would not consider the issue of the amount involved.

Petitioner invited the Appellate Court, and now invites this Court, to transform a District Court's granting of a simple Motion to Dismiss based upon a forum selection clause into a cutting edge issue about appellate jurisdiction in matters arising under the FAA. The Appellate Court declined the invitation three times and, Respondent submits, no compelling reason exists for this Court to accept it.

AT&T's Joint Motion to Dismiss Pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure

Petitioner has presented to this Court the statutory background of the FAA regarding the appealability of

Orders related to arbitration. Respondent submits that this appeal does not involve "the proper construction of the 1988 amendments to the FAA, 9 U.S.C. § 16" and that, thus, there is a misstatement of the law by the Petitioner relative to these issues. Petitioner has misstated to this Court the factual events leading up to the Appellate Court's decision.

Petitioner would have this Court believe that the District Court's Order was a *pro-arbitration order* with its appeal governed by the FAA 9 U.S.C. § 16. Respondent appealed from the forum selection decision and there is no question that the Appellate Court would have jurisdiction over such appeals. The District Court's Order was a final decision and appealable pursuant to 28 U.S.C. § 1291. The Appellate Court agreed and found that the FAA was simply not applicable to the appeal rejecting AT&T's alternate ground for affirming the dismissal.

More importantly is that the District Court's Order does not fall within any of the exceptions for appeal listed in 9 U.S.C. § 16(b) (Resp. App. 2a), the pro-arbitration orders that Petitioner would like this Court to believe are at issue. The District Court's Order is *not* an interlocutory order 1) granting a stay of any action under § 3 of the FAA; 2) directing arbitration to proceed under § 4 of the FAA; 3) compelling arbitration under § 206 of the FAA; or 4) refusing to enjoin an arbitration that is subject to the Act. AT&T and Sentinel came before the District Court upon a Rule 12(b) Motion to Dismiss. AT&T and Sentinel did not avail themselves of the rights to a party aggrieved by the alleged failure, neglect or refusal of another to arbitrate under written agreement for arbitration under § 4 of the FAA. Section 4 allows a

party so aggrieved to petition the U.S. District Court for an Order directing that such arbitration proceed in the manner provided for in such Agreement. (Resp. App. 3a-4a).

Under no interpretation of the District Court's Order could it be found that the District Court was directing arbitration to proceed under § 4 of the Act. With respect to arbitration, the District Court simply held that the dispute resolution processes of the 1994 Agreement require the parties to *either* submit their disputes to dispute resolution process *or file suit in New Jersey*. The District Court's Order is not "directing the parties to proceed with arbitration in accordance with the terms of the Agreement." Further, § 4 of the FAA requires that the hearing and proceedings under such an Agreement take place within the district in which the Petition for an order directing such arbitration is filed. The District Court in this case found that it had no jurisdiction over AT&T and Sentinel's claims, thus dismissing the Complaint and entering judgment.

Decision of the Court of Appeals

Despite Petitioner's attempts to change the mind of the Appellate Court on three different occasions, the panel reversed, in part, the District Court on the merits and made fast work of AT&T's manufactured and entirely misplaced questions related to appellate jurisdiction. Respondent appealed the forum selection decision of the District Court. The issue of arbitration came into the appellate decision *only* because Petitioner presented its contentions in that regard as an alternate ground for

affirming the decision of the District Court. The panel stated two reasons why § 16 of the FAA did not divest it of jurisdiction. First, considering, arguendo, that the FAA was applicable to the District Court's Order, the Order dismissing Security's action was a final decision and would be appealable pursuant to § 16(a)(3) of the FAA, relying upon *Arnold v. Arnold*, 920 F.2d 1269, 1275-76 (6th Cir. 1990). The Appellate Court then covered all of its bases and stated that even if *Arnold* were not controlling, that it could not be said that the action was disposed of in favor of arbitration. Petitioner wholly misstates the Appellate Court ruling on page 6 where Petitioner states "The Court [panel] reached this amazing conclusion even though it was constrained to admit that the District Court 'based its dismissal' on 'the ADR clause of the 1994 Agreement', which 'requires the parties to enter into binding arbitration' for claims less than $1 million." The Court of Appeals' decision states that the District Court's dismissal of Security's action was based *on the preclusion of the Tennessee forum* by the ADR clause of the 1994 Agreement. The Appellate Court did not state that the ADR clause in the 1994 Agreement requires the parties to enter into binding arbitration for claims seeking less than $1 million. The Appellate Court stated "The District Court simply dismissed the action, because in any event, the Agreement precluded litigation in Tennessee." Petitioner tried to pursue its alternate grounds for affirming the District Court's dismissal (the scope of the arbitration clause) at the appellate level. The Court of appeals cannot be divested of jurisdiction because of that pursuit.

The Appellate Court noted, and as is the case at present, Petitioner cited no authority for the proposition

that the mere possibility that arbitration would be required under a contractual dispute resolution process is sufficient to bar an immediate appeal under the FAA. The Appellate Court made it clear in its second stated reason that it was not in doubt of the results reached based upon the legal theories presented by AT&T. The panel distinguished the Order in this case (correctly characterizing it as a final order and not an order "in favor of arbitration") from those orders in the cases cited by AT&T where the circuits declined to accept jurisdiction of an interlocutory order. *The panel correctly held that the District Court relied upon the forum selection clauses rather than dispute resolution clause as grounds for its dismissal.* The panel thus correctly concluded that it had jurisdiction pursuant to 28 U.S.C. § 1291 which grants Appellate Court jurisdiction from all final decisions of the District Courts. The Appellate Court refused to be drawn into a legal controversy unrelated to this case in an attempt by Petitioner to insulate itself from Appellate review of the District Court's garden variety – and erroneous-interpretation of the effect of a "merger clause."

Petitioner, again, misstates the District Court's dismissal as being "predicated on an arbitration clause" at page 7. The District Court's dismissal upon which the Appellate Court justifies its decision for exercising jurisdiction pursuant to 28 U.S.C. § 1291 was predicated upon the forum selection clause and the "geographic forum selection provision of the ADR clause." Petitioner's position is nothing more than a self serving attempt to avoid appellate review of a wrongly-decided final District Court Order by injecting a muddle of jurisdictional controversy where none exists. As stated by the Appellate

Court, "although it is the policy of the FAA to defer the appeal of an Order Compelling Arbitration, *it is not the purpose of the Act, or any other statute or rule, to defer the appeal of a determination regarding a geographic forum-selection provision.*" (Pet. App. 5a *emphasis added*).

On the merits, the Appellate Court found that the disputes arising under the pre-1994 contract were not governed by the ADR clause in the 1994 Agreement. First, the Appellate Court found it clear that the scope of the ADR clause did not extend *over time* to all products furnished under pre-1994 Agreements. Second, the Appellate Court found that it was inappropriate to read the merger clause as superseding prior annual contracts. AT&T offered no authority to the Appellate Court nor does it offer authority to this Court any compelling argument or authority to this Court in support of its view that Security simply would abandon its established right to litigate disputes arising under the pre-1994 contract. The conclusion that the 1994 ADR clause is inapplicable to disputes arising under *earlier* contracts is supported by the cases cited by the Appellate Court. Petitioner has cited no authority to the contrary. There is no conflict among the Circuits or with this Court regarding the Sixth Circuit's construction of contracts in deciding which disputes the parties intended to arbitrate.

ARGUMENT IN OPPOSITION

I. There is no compelling reason for review in this case where Petitioner attempts to divest the Court of Appeals of jurisdiction by raising a dispute resolution clause at the appeal as an alternate ground for reaffirming the dismissal of the Complaint.

Petitioner would have this Court believe that the case at bar presents an opportunity for this Court to provide an authoritative answer on the proper interpretation of § 16 (a)(3) of the FAA governing the jurisdiction of an appeal from "a final decision with respect to arbitration". Petitioner, however, refuses, throughout its Petition, to admit that the Appellate Court based its jurisdiction of the Order on 28 U.S.C. § 1291.

The District Court's Order never addressed the applicability of the Act but opined as to what "the parties intended by the language of § 19 [the merger clause] of the 1994 Agreement when they provided that the terms of the contract superseded all written understanding between the parties concerning 'the subject matter of the Agreement.' " The Petition does an admirable job of setting forth a substantial disagreement among the Courts of Appeals about whether the FAA rule against interlocutory appeals from decision compelling arbitration applies as well to "embedded" cases in which the District Court labels its decision as a dismissal rather than a stay of proceeding and orders that the parties take their case to arbitration. The Sixth Circuit has taken one side on this debate along with other circuits and it may well be that, if Petitioner is correct that this is an issue engendering substantial litigation, this Court will soon be presented

with a case that gives it the opportunity to take sides in this debate.

This is not such a case, however. As the foregoing account of the proceedings below makes clear, although Petitioner and Sentinel presented its FAA arguments to the District Court, that Court was not persuaded by them but rather dismissed for a very different reason. The District Court's conclusion was that, regardless of whether the case was eventually to be arbitrated (because the amount in controversy was less than $1,000,000) or litigated in Court because the amount in controversy was greater than that amount, the forum selected by the parties was New Jersey or Virginia rather than Tennessee.

Respondent appealed from that forum selection decision and there is no question that the Court of Appeals would have jurisdiction over such appeals pursuant to 28 U.S.C. § 1291. The issue of arbitration came into the decision below only because Petitioner presented its contentions in that regard as an alternate ground for affirming the decision of the District Court. If there is any question about appellate jurisdiction in this case, it is whether a Court of Appeals loses jurisdiction of an appeal taken from the dismissal of a case based upon a forum selection clause simply because the Appellee presents a dispute resolution clause as an alternate ground for affirmance of the dismissal. Respondent rather doubts that there is any reason to believe that such an alternate grounds destroys appellate jurisdiction that is otherwise present, and in any event, not a single case presented by Petitioner so holds. In short, *there is no conflict among the circuits on the issue of jurisdiction that exists in this case and*

the jurisdictional question that Petitioner asked the Courts to decide is simply not presented in this case.

The facts presented in those cases relied upon by Petitioner are simply inapposite to the facts presented in this case. In *Gammaro v. Thorp Consumer Discount Co.*, 165 F.3d 93 (8th Cir. 1984), Defendants filed a Motion to Compel Arbitration and the District Court ordered the parties to proceed to arbitration as provided for in the loan agreement between the parties and dismissed the class allegations. In *Gammaro,* the District Court specifically entered an Order Compelling Arbitration with the District Court maintaining jurisdiction over the claims. The Eighth Circuit specifically addressed the issue of Gammaro seeking review in the Circuit Court filing a Petition to Enforce or Vacate the Arbitrator's Award in the District Court. In *Gammaro,* the District Court's Order was pursuant to § 206 of the FAA, with the District Court retaining jurisdiction over the claim. In the case at bar, the District Court completely dismissed Security's Complaint and there was nothing left for the District Court to do. In *McCarthy v. Providential Corp.*, 122 F.3d 1242 (9th Cir. 1997), *cert. denied,* 119 S.Ct. 275 (1998), Providential filed a Motion to Compel Arbitration pursuant to § 4 of the Act asserting that the deeds of trust executed by Appellants contained an enforceable arbitration provision. The District Court granted Providential's Motion ordering Appellants to submit their claims to arbitration pursuant to § 4 of the Act. Respondent submits that none of Petitioner's cases apply to the Order from which Security appealed. Security appealed from an Order dismissing its claims pursuant to a Motion to Dismiss based upon a forum selection clause.

In the case presented, there is no unresolved jurisdictional issue between the circuits and there would simply be confusion rather than clarity added to an issue of appellate jurisdiction that is wholly unrelated to this case.

II. There is no compelling reason for the Supreme Court to grant review to decide whether the Court of Appeals correctly construed a dispute resolution clause.

Petitioner, beginning on page 15 of its Petition, misstates the facts and leads this Court to believe that the issue before the Appellate Court was arbitrability of the parties' claim and the scope of arbitrable issues. The Court of Appeals was not asked to resolve issues related to arbitrability of the claim. The Court of Appeals was asked to overrule the District Court's Order holding that the 1994 Agreement was applicable to claims relating to product supplied under earlier contracts under a merger clause. The District Court relied upon the ADR clause and the merger or integration clause in the 1994 Agreement. The Appellate Court found that the ADR clause alone did not reach disputes relating to products shipped under agreements pre-1994. The Court of Appeals did agree, however, that the ADR provision was very broad in scope and certainly reached all claims raised by Security with respect to the 1994 Agreement. The Court would not, however, extend the breadth of the scope over a period of time preceding 1994. Second, the Appellate Court found that it was inappropriate to read the merger clause as superseding prior annual contracts.

Petitioner makes a general plea for the Court to decide whether the ADR clause applies to its dispute with Respondent. Apart from the question whether the FAA applies at all to clauses that provide for alternate means of dispute resolution, possibly culminating in arbitration and possibly in litigation, the fact remains that Petitioner has offered no more than its general disagreement with the way the Court of Appeals construed the Agreement in this case. There is no question that when the agreement of the parties makes some claims arbitrable and other not, the Act requires piecemeal litigation in accordance with the agreement of the parties. *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 20, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983); *see also Seaboard Coastline R.R. Co. v. Trailer Train Co.*, 690 F.2d 1343, 1348-50 (11th Cir. 1982), where the Court found an arbitration clause and a license agreement between the parties did not encompass the parties' dispute under a separate leasing agreement between the parties. The fact that the proceedings may be complex when arbitration or litigation are pursued contemporaneously is not alone a sufficient basis in which to require arbitration of all disputes. *Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985) (requiring arbitration of state law claims while federal securities claims remain the subject of litigation.) The Appellate Court's decision is not in conflict with decisions of this Court.

On this aspect of the case, Petitioner rests its request for review on the proposition that the FAA's general propensity favoring arbitration where the question of construction is a close one overrides any contrary principle of contract interpretation. Yet, Petitioner offers no

precedent either from this Court, or from any lower Court, that endorses its extreme view of the FAA. Here, the Appellate Courts studied the Agreements in question, applied the principle of contra preferentum in construing the Agreement against the interests of its drafter and held that the agreement to arbitrate did not extend to disputes under Agreements before 1994. There is no division among the lower federal courts about this question and no reason for the Court to accept Petitioner's invitation to grant review in this case to decide the meaning of the Agreements at issue between the parties.

CONCLUSION

There exists no compelling reason for this Court to review Petitioner's Writ of Certiorari based upon the facts in this case.

Respectfully submitted,

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APPENDIX

[Filed Dec. 10, 1997]

SECURITY WATCH, INC.,

Plaintiff,

No. 96-2959-TU

v.

SENTINEL SYSTEMS, INC., et al,

Defendants.

JUDGMENT

Decision by the Court. This action came for consideration before the Court. The issues have been duly considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is dismissed in accordance with the Order, docketed October 28, 1997, which granted defendants' Motion to Dismiss.

APPROVED:

/s/ JEROME TURNER
UNITED STATES
DISTRICT COURT

DECEMBER 15, 1997
DATE

ROBERT R. DI TROLIO
CLERK

CLERK
(By) DEPUTY CLERK

This document entered on docket sheet in compliance with Rule 58 and/or 79(a) FRCP on 12-15-97.

9 U.S.C. § 16

§ 16. Appeals

(a) An appeal may be taken from –

(1) an order –

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order –

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

9 U.S.C. § 4

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of

admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

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28 U.S.C. § 1291

§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeal for the Federal Circuit) shall have jurisdiction of appeals from all final decision of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.
